IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9058 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDUBHAI BACHUBHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR UDAI BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 02/12/2000

ORAL JUDGEMENT

1. The present petitioner has challenged by way of this petition under Article 226 of the Constitution of India the order of detention passed by the District Magistrate, Rajkot, on 20th July, 2000 against him in

pursuance of the power vested in District Magistrate under Section 3(1) of the Prevention of Anti Social Activities Act, 1985 (PASA for short) and the petitioner was detained from 21st July, 2000.

2. The ground placed on record reveals that on 13th June, 1998, on 20th April, 1999, on 3rd February, 2000, the crimes were registered against the petitioner before Upleta Police Station under Sections 323, 324, 114, 504, 506(2), 392 and 450 of the IPC and Section 25(1) (A) of the Arms Act. The detaining authority considered the investigation of the above crimes registered against the petitioner and statements of five witnesses who offered their statements on assurance of anonymity against the petitioner that the petitioner is hardened criminal and was obstruction to the public order, was in habit of harassing women and was of a bad character. From the above material, the detaining authority reached to the conclusion that the petitioner was a "dangerous person" within the meaning of Section 2(c) of the PASA Act.

3. Learned Advocate Mrs Subhadraben Patel for the petitioner and learned AGP Mr. Udai R. Bhatt were heard.

4. Detention order came to be challenged on various grounds. One of the grounds which was vehemently urged before this court was in all the three offences, the petitioner was released on bail, however, nothing is there on the record that his bail application was opposed or that any proceedings for the cancellation of the bail were contemplated at any time by the detaining authority. It was urged that therefore there is non-application of mind on the part of the detaining authority because of non-consideration of less drastic remedy available to the detaining authority.

5. There is some substance in the argument advanced on behalf of the petitioner. In Zubedabibi Rasidkhan Pathan vs. State of Gujarat, reported in 1995 (2) GLR, 1134, Division Bench of this Court observed that the powers granted to the court for cancelling the bail under Section 437(5) of the Cr.P.C. are far more wide in import and intent, which would be less drastic remedy and could have been considered by the detaining authority. In the detention order, it is nowhere mentioned that less drastic remedy was ever considered. Therefore, the subjective satisfaction of the detaining authority is vitiated on this ground also. This view is fortified again by the Division Bench of this Court in Letters Patent Appeal No. 1056 of 199, which is decided on 15th

of September, 1999.

6. In this view of the matter, since the detaining authority failed to consider the less drastic remedy available to him, the order is required to be set side on the ground of non-application of mind by the detaining authority.

7. In view of this discussion, the detention order dated 20th July, 2000, passed by the District Magistrate, Rajkot, against the petition under PASA Act is hereby ordered to be quashed and set aside. Petitioner Chandubhai Bachubhai Rathod is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)